

# Exhibit A

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

JOAO CABRAL

VS.

C.A. NO.: PC-2020-

LOWE'S HOME CENTERS, LLC and  
RUST-OLEUM SALES COMPANY, INC.

**PARTIES**

1. Plaintiff, Joao Cabral, is a resident of the City of Cranston, County of Providence, State of Rhode Island (hereinafter "Plaintiff").
2. Defendant, Lowe's Home Centers, LLC (hereinafter "Lowe's"), is a business corporation existing under the laws of the State of North Carolina with a principal place of business therein and at all relevant times operated and maintained a place of business in Cranston, Rhode Island. Defendant has sufficient minimum contacts with the State of Rhode Island for this Court to exercise personal jurisdiction.
3. Defendant, Rust-Oleum Sales Company, Inc. (hereinafter "Rust-Oleum"), is a business corporation existing under the laws of the State of Illinois with a principal place of business therein and is duly authorized to conduct business in the State of Rhode Island and has sufficient minimum contacts with the State of Rhode Island for this Court to exercise personal jurisdiction.

**FACTUAL BACKGROUND**

4. Rust-Oleum manufactured, packaged, distributed, placed in the stream of commerce and held out for sale to the general public a certain consumer product known as "Rust-Oleum" (hereinafter the "Product").
5. Defendant Lowe's displayed, distributed and/or sold the Product.
6. On or about October 13, 2017 Plaintiff purchased the Product at Lowe's place of business in Cranston, Rhode Island.
7. Thereafter, on or about October 13, 2017, the Plaintiff attempted to use the Product in accordance with its intended use, which included holding the Product in his hand and spraying the contents of the can onto metal items.

8. As the Plaintiff held the Product in his right hand and with his thumb compressed upon the nozzle cap in order to cause the contents of the can to be released, the can suddenly exploded in the hand of the Plaintiff, causing him to suffer severe grievous and permanent injuries.
9. As a direct result and proximate cause of his attempted use of the Product, the Plaintiff sustained severe, grievous and permanent injuries.

### COUNT I

#### Negligence – Lowe's

10. Paragraphs 1 through 9 are incorporated herein by reference as if fully set forth at length herein.
11. On or about October 13, 2017, and prior thereto, Lowe's was engaged in the business of marketing, selling and otherwise distributing the Product.
12. At all times material hereto, Lowe's marketed, sold and otherwise distributed the Product to ultimate users and/or consumers such as the Plaintiff.
13. At all times material hereto, Lowe's owed a duty of due care to ultimate users and/or consumers of the Product, including the Plaintiff, in the marketing, selling and/or distributing of the Product.
14. At all material times hereto, Plaintiff exercised due care for his own safety and well-being.
15. At all material times hereto, Plaintiff was attempting to use the Product in accordance with its intended use.
16. As a direct result and proximate cause of attempting to use the Product, Plaintiff sustained severe, grievous and permanent injuries.
17. The injuries sustained by Plaintiff were the direct and proximate result of Lowe's negligent breach of its aforesaid duty, including but not limited to Lowe's:
  - a. Failure to use care in the marketing, distribution, inspecting, advertising and selling the Product;
  - b. Failure to make or cause to be made reasonable testing of the Product in order to assure the safety and integrity of the Product;
  - c. Failure to otherwise adequately test the product before marketing, distributing and selling the Product;
  - d. Failure to warn potential and actual users and/or recipients of the potential hazards of the Product;

- e. Failure to properly educate consumers of the Product about the safe use of the Product;
  - f. Failure to provide adequate protection for persons coming into contact with the Product, such as the Plaintiff, from suffering the injuries that the Plaintiff still suffers from; and
  - g. Failure to otherwise use due care in the packaging, marketing, distribution and/or sale of the Product.
18. As a direct result and proximate cause of Lowe's negligence as aforesaid, the Plaintiff suffered severe injuries to his mind, body, nerves and nervous system and will in the future suffer extreme pain and will be unable to perform his usual activities, has suffered a loss of earning capacity and loss of enjoyment of life, has suffered injuries which are permanent, including permanent disfigurement and loss of use and loss of bodily function.
19. By means of the foregoing, the Plaintiff has incurred and will in the future incur the need for and resulting expenses for medical and nursing treatment, medicines, hospitalizations, therapy and the like.

WHEREFORE, the Plaintiff demands judgment against Lowe's in a sum sufficient to establish the jurisdiction of this Honorable Court, exclusive of interest and costs and whatever further relief this Court deems meet and just.

## **COUNT II**

### **Res Ipsa Loquitur – Lowe's**

20. Paragraphs 1 through 9 are incorporated herein by reference as if fully set forth at length herein.
21. At all material times hereto, the Product was in the exclusive control of Lowe's and/or its agents, servants and employees when Plaintiff purchased the Product.
22. The events set forth herein are of a nature and type such that they would not have occurred were it not for the negligence of Lowe's and/or its agents, servants, and employees.
23. Plaintiff is without knowledge of the precise acts of negligence by Lowe's which caused the injuries to Plaintiff as aforesaid.
24. The precise acts of negligence which caused the injuries to Plaintiff are known solely and exclusively by Lowe's and/or its agents, servants and employees.
25. As a direct result and proximate cause of Lowe's negligence as aforesaid, the Plaintiff suffered severe injuries to his mind, body, nerves and nervous system and will in the future suffer extreme be unable to perform his usual activities, has suffered a loss of earning

capacity and loss of enjoyment of life, has suffered injuries which are permanent, including permanent disfigurement and loss of use and loss of bodily function.

26. By means of the foregoing, the Plaintiff has incurred and will in the future incur the need for and resulting expenses for medical and nursing treatment, medicines, hospitalizations, therapy and the like.

WHEREFORE, the Plaintiff demands judgment against Lowe's in a sum sufficient to establish the jurisdiction of this Honorable Court, exclusive of interest and costs and whatever further relief this Court deems meet and just.

**COUNT III**  
**Strict Liability – Lowe's**

27. Paragraphs 1 through 9 are incorporated herein by reference as if fully set forth at length herein.
28. At the time the Product was marketed, sold and/or otherwise distributed by Lowe's, it contained a defect which made it unreasonably dangerous to all actual and potential users and recipients including the Plaintiff.
29. Plaintiff had no knowledge of the defective condition and/or nature of the defect to the Product.
30. At the time the Plaintiff purchased and received the Product that was marketed, distributed and/or sold by Lowe's, said Product was in essentially the same condition as it was when it left the hands of Lowe's.
31. As a direct and proximate result of attempting to use the Product, Plaintiff suffered severe and permanent personal injuries.
32. As a direct result and proximate cause of Lowe's negligence as aforesaid, the Plaintiff suffered severe injuries to his mind, body, nerves and nervous system and will in the future suffer extreme be unable to perform his usual activities, has suffered a loss of earning capacity and loss of enjoyment of life, has suffered injuries which are permanent, including permanent disfigurement and loss of use and loss of bodily function.
33. By means of the foregoing, the Plaintiff has incurred and will in the future incur the need for and resulting expenses for medical and nursing treatment, medicines, hospitalizations, therapy and the like.

WHEREFORE, the Plaintiff demands judgment against Lowe's in a sum sufficient to establish the jurisdiction of this Honorable Court, exclusive of interest and costs and whatever further relief this Court deems meet and just.

**COUNT IV**  
**Breach of Warranty – Lowe’s**

34. Paragraphs 1 through 9 are incorporated herein by reference as if fully set forth at length herein.
35. Defendant Lowe’s impliedly and expressly warranted that the Product was of merchantable quality and fit for its intended use.
36. At all times material hereto, the Plaintiff relied upon these warranties and attempted to use the Product for its intended purpose.
37. Defendant breached its express and implied warranties of merchantability and fitness for intended use, as a result of which Lowe’s caused the injuries to the Plaintiff as described above.
38. As a result of Lowe’s breach of the aforesaid warranties, the Plaintiff suffered severe and permanent injuries.
39. As a direct result and proximate cause of Lowe’s negligence as aforesaid, the Plaintiff suffered severe injuries to his mind, body, nerves and nervous system and will in the future suffer extreme be unable to perform his usual activities, has suffered a loss of earning capacity and loss of enjoyment of life, has suffered injuries which are permanent, including permanent disfigurement and loss of use and loss of bodily function.
40. By means of the foregoing, the Plaintiff has incurred and will in the future incur the need for and resulting expenses for medical and nursing treatment, medicines, hospitalizations, therapy and the like.

WHEREFORE, the Plaintiff demands judgment against Lowe’s in a sum sufficient to establish the jurisdiction of this Honorable Court, exclusive of interest and costs and whatever further relief this Court deems meet and just.

**COUNT V**  
**Negligence – Rust-Oleum**

41. Paragraphs 1 through 9 are incorporated herein by reference as if fully set forth at length herein.
42. On or about October 13, 2017, and prior thereto, Rust-Oleum engaged in the business of designing, manufacturing, testing, inspecting, marketing, producing, selling and/or otherwise distributing a certain product called “Rust-Oleum” (hereinafter the “Product”).

43. At all material times hereto Rust-Oleum sold and/or otherwise distributed the Product to Lowe's and which thereafter was sold to users and consumers including the Plaintiff.
44. Before October 13, 2017, Rust-Oleum designed, manufactured, tested, inspected, marketed, produced, sold and/or otherwise distributed the Product that was sold to the Plaintiff by Lowe's.
45. At all material times hereto, Rust-Oleum owed a duty of due care to ultimate users and/or recipients of the Product, including Plaintiff, in the designing, manufacturing, testing, inspecting, marketing, producing, selling and/or distributing the Product.
46. At all material times hereto, Plaintiff exercised due care for his own safety and well-being when he attempted to use the Product.
47. As a direct proximate result of receiving and attempting to use the product, Plaintiff sustained severe and permanent personal injuries and was otherwise damaged as hereinbefore alleged.
48. The injuries sustained by Plaintiff were the direct and proximate result of Rust-Oleum's negligent breach of its aforesaid duty, including but not limited to Rust-Oleum's:
  - a. Failure to use care in the design, manufacturing, producing, distributing, inspecting, advertising and selling the Product;
  - b. Failure to make or cause to be made reasonable testing of the Product in order to assure the safety and integrity of the Product;
  - c. Failure to otherwise adequately test the Product before marketing, distributing and selling the Product;
  - d. Failure to warn potential and actual users and/or recipients of the potential hazards of the Product;
  - e. Failure to properly educate consumers of the Product about the safe use of the Product;
  - f. Failure to provide adequate protection for persons coming into contact with the Product, such as the Plaintiff, from suffering the injuries that the Plaintiff still suffers from; and
  - g. Failure to otherwise use due care in the packaging, marketing, distribution and/or sale of the Product.
49. As a direct result and proximate cause of Rust-Oleum's negligence as aforesaid, the Plaintiff suffered severe injuries to his mind, body, nerves and nervous system and will in the future suffer extreme pain and will be unable to perform his usual activities, has suffered a loss of earning capacity and loss of enjoyment of life, has suffered injuries which are permanent, including permanent disfigurement and loss of use and loss of bodily function.

50. By means of the foregoing, the Plaintiff has incurred and will in the future incur the need for and resulting expenses for medical and nursing treatment, medicines, hospitalizations, therapy and the like.

WHEREFORE, the Plaintiff demands judgment against Rust-Oleum in a sum sufficient to establish the jurisdiction of this Honorable Court, exclusive of interest and costs and whatever further relief this Court deems meet and just.

#### **COUNT VI**

##### **Res Ipsa Loquitur – Rust-Oleum**

51. Paragraphs 1 through 9 are incorporated herein by reference as if fully set forth at length herein.
52. At all material times hereto, the Product was in the exclusive control of Rust-Oleum and/or its agents, servants and employees at the time it was manufactured.
53. The events set forth herein are of a nature and type such that they would not have occurred were it not for the negligence of Rust-Oleum and/or its agents, servants, and employees.
54. Plaintiff is without knowledge of the precise acts of negligence by Rust-Oleum which caused the injuries to Plaintiff as aforesaid.
55. The precise acts of negligence which caused the injuries to Plaintiff are known solely and exclusively by Rust-Oleum and/or its agents, servants and employees.
56. As a direct result and proximate cause of Rust-Oleum's negligence as aforesaid, the Plaintiff suffered severe injuries to his mind, body, nerves and nervous system and will in the future suffer extreme be unable to perform his usual activities, has suffered a loss of earning capacity and loss of enjoyment of life, has suffered injuries which are permanent, including permanent disfigurement and loss of use and loss of bodily function.
57. By means of the foregoing, the Plaintiff has incurred and will in the future incur the need for and resulting expenses for medical and nursing treatment, medicines, hospitalizations, therapy and the like.

WHEREFORE, the Plaintiff demands judgment against Rust-Oleum in a sum sufficient to establish the jurisdiction of this Honorable Court, exclusive of interest and costs and whatever further relief this Court deems meet and just.

#### **COUNT VII**

##### **Strict Liability – Rust-Oleum**

58. Paragraphs 1 through 9 are incorporated herein by reference as if fully set forth at length herein.



59. At the time the Product was marketed, sold and/or otherwise distributed by Rust-Oleum, it contained an obvious and foreseeable defect which made it unreasonably dangerous to all actual and potential users and recipients including the Plaintiff.
60. Plaintiff had no knowledge of the defective condition and/or nature of the defect to the Product at the time of purchase.
61. At the time the Plaintiff purchased and received the Product that was marketed and distributed by Rust-Oleum and sold to him by Lowe's, said Product was in essentially the same condition as it was when it left the hands of Rust-Oleum.
62. As a direct and proximate result of the receiving and attempted use of the Product, Plaintiff suffered severe and permanent personal injuries.
63. As a direct result and proximate cause of Rust-Oleum's negligence as aforesaid, the Plaintiff suffered severe injuries to his mind, body, nerves and nervous system and will in the future suffer extreme be unable to perform his usual activities, has suffered a loss of earning capacity and loss of enjoyment of life, has suffered injuries which are permanent, including permanent disfigurement and loss of use and loss of bodily function.
64. By means of the foregoing, the Plaintiff has incurred and will in the future incur the need for and resulting expenses for medical and nursing treatment, medicines, hospitalizations, therapy and the like.

WHEREFORE, the Plaintiff demands judgment against Rust-Oleum in a sum sufficient to establish the jurisdiction of this Honorable Court, exclusive of interest and costs and whatever further relief this Court deems meet and just.

**COUNT VIII**  
**Breach of Warranty – Rust-Oleum**

65. Paragraphs 1 through 9 are incorporated herein by reference as if fully set forth at length herein.
66. Defendant Rust-Oleum impliedly and expressly warranted that the Product was of merchantable quality and fit for its intended use.
67. At all times material hereto, the Plaintiff relied upon these warranties and attempted to use the Product for its intended purpose.
68. Rust-Oleum breached its express and implied warranties of merchantability and fitness for the Product's intended use and as a result of said breach, the defective Product caused the injuries to the Plaintiff as described herein.

69. As a further result of Rust-Oleum's breach of the aforesaid warranties, the Plaintiff suffered severe and permanent injuries.

70. As a direct result and proximate cause of Rust-Oleum's negligence as aforesaid, the Plaintiff suffered severe injuries to his mind, body, nerves and nervous system and will in the future suffer extreme pain and be unable to perform his usual activities, has suffered a loss of earning capacity and loss of enjoyment of life, has suffered injuries which are permanent, including permanent disfigurement and loss of use and loss of bodily function.

71. By means of the foregoing, the Plaintiff has incurred and will in the future incur the need for and resulting expenses for medical and nursing treatment, medicines, hospitalizations, therapy and the like.

WHEREFORE, the Plaintiff demands judgment against Rust-Oleum in a sum sufficient to establish the jurisdiction of this Honorable Court, exclusive of interest and costs and whatever further relief this Court deems meet and just.

**PLAINTIFF DEMANDS A TRIAL BY JURY AND DESIGNATES  
DENNIS H. RICCI AND RICHARD A. PACIA AS TRIAL COUNSEL**

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